

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

## ORDER

At Wilmington this 24<sup>th</sup> day of Nov, 2014, for the reasons set forth in the Memorandum issued this date,

IT IS HEREBY ORDERED that:

1. The plaintiff is allowed to **proceed** against the defendants: (1) William Kuschel (sexual harassment/assault claim); (2) C/O VanGorder, C/O Ingrem, C/O Abernathy, and C/O Hutchins (failure to protect/intervene claims); and (3) Stanley Baynard and Sgt. Austin (retaliation claims).
2. The defendants Lt. Wallace, C/O Levin, Warden Pierce, Capt. Burton, Commissioner Coupe, and C/O Paysons are **dismissed** as the claims against them are legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1).

IT IS FURTHER ORDERED that:

1. Pursuant to Fed. R. Civ. P. 4(c)(3) and (d)(1), the plaintiff shall complete and return to the Clerk of Court **original** "U.S. Marshal-285" forms for **the remaining defendants William Kuschel, C/O VanGorder, C/O Ingrem, C/O Abernathy, C/O Hutchins, Stanley Baynard and Sgt. Austin**, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH

STREET, WILMINGTON, DELAWARE, 19801, pursuant to 10 Del. C. § 3103(c). **The plaintiff shall provide the court with copies of the complaint (D.I. 3) for service upon the remaining defendants and the attorney general. The plaintiff is notified that the United States Marshals Service (“USMS”) will not serve the complaint until all "U.S. Marshal 285" forms and copies of the complaint have been received by the Clerk of Court. Failure to provide complete "U.S. Marshal 285" forms and copies of the complaint for the remaining defendants and the attorney general within 120 days of this Order may result in the complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

2. Upon receipt of the form(s) required by paragraph 1 above, the USMS shall forthwith serve a copy of the complaint (D.I. 3), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the defendants so identified in each 285 form.

3. A defendant to whom copies of the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form have been sent, pursuant to Fed. R. Civ. P. 4(d)(1), has thirty days from the date of mailing to return the executed waiver form. Such a defendant then has sixty days from the date of mailing to file its response to the complaint, pursuant to Fed. R. Civ. P. 4(d)(3). A defendant residing outside this jurisdiction has an additional thirty days to return the waiver form and to respond to the complaint.

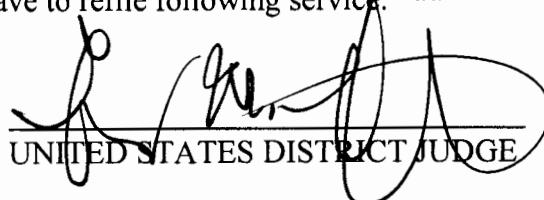
4. A defendant who does not timely file the waiver form shall be personally served and shall bear the costs related to such service, absent good cause shown, pursuant to Fed. R. Civ. P.

4(d)(2). A separate service order will issue in the event a defendant does not timely waive service of process.

5. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

6. **NOTE: \*\*\*** When an amended complaint is filed prior to service, the court will **VACATE** all previous Service Orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). \*\*\*

7. **Note: \*\*\*** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. \*\*\*



UNITED STATES DISTRICT JUDGE